No. 14786

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

HALLDORA KRISTIN SIGURDSON,

Appellant,

vs.

ALBERT DEL GUERCIO,

Appellee.

Appeal From the United States District Court for the Southern District of California, Central Division.

APPELLANT'S REPLY BRIEF.

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Reply to Appellee's Point One.

Appellant in her opening brief, page 13, shows that the Supreme Court in *Pedreiro v. Shaughnessy,* 349 U. S. 48, recognized that the intent of the framers of the 1952 Act and of Congress was to grant the additional relief of judicial review to aliens facing an order of deportation.

Heikkila v. Barber, 345 U. S. 229, 235, 236, has shown that the Supreme Court considers habeas corpus as a constitutional remedy limited to the traditional question of due process and indicates conclusively that

> ". . . it is the scope of inquiry on habeas corpus that differentiates use of the writ from judicial review as that term is used in Administrative Procedure Act."
>
> *Heikkila, supra,* 236.

The narrow scope of inquiry is set forth in *Eagles v. Samuels,* 329 U. S. 304, 311, quoted with approval and followed by this Court in our former appeal of *Sigurdson v. Landon,* 215 F. 2d 791, 796. The following from *Eagles, supra,* 311, shows with unerring clarity that even then the Supreme Court observed and considered as binding the difference in the scope of review:

> "Congress made the decisions of the local boards and of the boards of appeal 'final,' except as appeals from them may be authorized . . . *withholding from the courts the customary power of review of administrative action.* See, *Estep v. U. S.,* 327 U. S. 114." (Emphasis added.)

As was so aptly pointed out in 51 Columbia Law Review 1064, 1066, the most important effect of use of APA in deportation cases is the broadening of the scope of review. While it is true that *United States v. Holton,* 222 F. 2d 840, 841, considers the scope of review in APA action and writ action as the same, that latter decision was not called upon to decide the fact. The statement is dicta. The lower court was apparently reversed on the habeas corpus principles of due process. Direct attack was unnecessary to secure a reversal there.

But, in our case a direct attack is necessary and now permissible.

Heikkila, supra;

Pedreiro, supra.

As we said in our opening brief, page 15, the verity of the appellant's complaint will be established by the scope of review now allowed us under the APA. We can and will show from the whole record that eight dictaphone belts were used and employed to make the statement taken from

appellant, yet only five belts were required to record a playback of the statement introduced at her deportation hearing. Three belts were never made part of record despite objection of appellant nor were they ever made part of record in the habeas corpus proceeedings despite appellant's efforts and demands. Three belts were added to record in habeas corpus proceedings, but one of the three belts was made subsequent to appellant's deportation hearing and constituted a fraud upon the trial court in the former proceeding and this is a matter of record in that proceeding.

Moreover, we can and will establish that the Government's own dictaphone experts testified that a playback should show a multiplicity of "clicks" to indicate numerous starting and stopping of the dictaphone. The playback revealed one "click."

Appellant can and will prove under the direct attack permitted under APA that her other allegations are equally true.

The case of *Cruz-Sanchez* set forth in the appendix of appellee's brief attempts to substitute its opinion what Congress intended instead of accepting the statements of the authors of the 1952 Act. Supreme Court in *Pedreiro, supra,* page 52, accepted the legislative intent as expressed by the authors of the law (App. Op. Br. p. 13). Cruz-Sanchez gives no consideration to the Supreme Court expressions as to difference between writ and APA review in scope and meaning of judicial review as set forth in *Heikkila, supra.*

Reply to Appellee's Point Two.

Lapides v. Clark, 176 F. 2d 619, was decided in 1949. The appellant is acting under a right granted by the 1952 Act. However, a short quote from *Lapides* is in point here. It is found on page 13 of appellee's brief. It is:

> ". . . We wonder what justification there can be for this *additional* and needless litigation with all its trouble, *expense* and delay, which the law so much abhors. . . ." (Emphasis supplied.)

Our answer to that is that Congress was aware of possibilities of injustice under habeas corpus and gave alien right to make direct attack to prove gross improprieties, such as we endeavor to have the opportunity to prove.

The *Heikkila* proceedings (Appellee's Br. p. 14), is not in point. There the order of deportation was made prior to 1952 Act. There never existed a cause of action.

Summary.

Appellant has shown that the Supreme Court in *Pedreiro, supra,* has decreed that it was the intent of Congress in enacting the 1952 Act to grant to aliens the right of judicial review of deportation orders.

Appellant has shown that the Supreme Court in *Heikkila, supra,* has declared that habeas corpus is not judicial review as that term is employed in the Administrative Procedure Act.

Appellant has shown that habeas corpus is a constitutional examination, traditionally limited in its scope of review, and that Congress gave aliens the additional remedy of judicial review, not only as a means of avoiding incarceration, but previously as a means of permitting

worthy aliens to prove their right to remain in the United States in accordance with the American principles of justice, decency and honor.

Appellant is fighting for that opportunity and appeals to this Court to grant same by reversing lower court's decision.

Respectfully submitted,

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Attorney for Appellant.